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March 21, 2008

VIA FEDERAL EXPRESS

Jeff Jordan
Office of General Counsel
Federal Election Commission
999 "E" Street, NW
Washington, DC 20463

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COMMISSION
OFFICE OF GENERAL
COUNSEL

2008 MAR 24 A 11 16

Re *MUR 5977*

Dear Mr. Jordan

We represent Roger Salazar and The American Leadership Project (ALP) in the above-mentioned complaint filed by Michele Seng, Emerylyde Bradley, and J. Edward Lupton (We have attached the designation of counsel form). Respondents request that this matter remain confidential in accordance with 2 U.S.C. section 437g(a)(4)(B).

The complaint, which was filed on February 25, 2008, is based entirely on speculation in the media about what ALP may or may not do in the future, much of which is wrong. At the time the complaint was filed, ALP had not broadcast any communications or filed any reports and its sole activity was to release one video on YouTube. Complainants' allegations about ALP's fundraising activities are likewise based entirely on speculation. As discussed below, ALP at all times fully complied with the law and conducted its activity so as not to become a political committee under the Federal Elections Campaign Act (the "Act"). Therefore, respondents respectfully request that the FEC dismiss the complaint without further action.

The complaint alleges that ALP is a political committee within the meaning of the Act, and therefore was required to register and report its activity as a political committee and comply with the Act's source and contribution restrictions, including limiting the amount it

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receives from each donor to \$5,000 per year¹ Importantly, complainants make only passing reference to ALP's communications and do not seriously contend, much less attempt to demonstrate, that those communications were either express advocacy or the functional equivalent of express advocacy Nor do they attempt to seriously argue that ALP's communications failed to meet the requirements for electioneering communications established by *FEC v Wisconsin Right to Life*, 127 S Ct 2652 (June 25, 2007) ("WRTL") and the FEC's recent rulemaking, 72 Fed Reg 72899 (An analysis of why ALP's communications met these standards is set forth in greater detail in a memo dated February 21, 2008, which was attached to the complaint)²

In sum, complainants do not claim ALP is a political committee based on its expenditures³ Rather, they claim ALP is a political committee based on the manner in which it solicited funds But here again, the allegations are not based on any facts The gravamen of the complaint is that an entity becomes a political committee under the Act if it receives money in response to a communication that indicates some or all of the money "will be used to support or oppose the election of a clearly identified Federal candidate" 11C F R § 100 57(a) Complainants then allege that either ALP's public descriptions of its work or its communications to donors must have come within section 100 57(a) But they cite no facts showing that ALP raised money claiming the ads would support the election or defeat of any Federal candidate they point to no fundraising materials to support the allegation See Complaint at 4 In fact, complainants are reduced to arguing that,

At a minimum, by publicly acknowledging that its ads would only run in precisely the same two states that Senator Clinton's campaign itself describes as her "firewall," the ordinary Ohioans allege that [ALP] has indicated that any funds [ALP] receives will be used to support Senator Clinton's presidential campaign

Complaint at 4

¹ ALP operates independently from any federal, state or local candidate, does not make any contributions to candidates, does not coordinate with any candidates, and does not engage in any express advocacy or its equivalent Complainants do not allege otherwise

² After the complaint was filed, ALP broadcast several communications in Texas and Ohio Those communications complied with the disclaimer, subject-matter and reporting rules for electioneering communications under the Act ALP filed a Form 9 report on March 4, 2008, which details the receipts and expenditures associated with those communications

³ That is made clear by the fact that their request for relief focuses on contributions, not expenditures

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That of course is not the test under section 100 57 or any other provision of the Act for determining when an entity becomes a political committee. The complaint should be dismissed on its face because it fails to allege any specific facts that would constitute wrongdoing.

Moving beyond the complaint, however, there are two independent reasons ALP's fundraising efforts did not make it a political committee. First, ALP's fundraising efforts did not implicate section 100 57. Far from saying donations would be used to elect or defeat a particular federal candidate, ALP's fundraising did not mention any federal candidate and instead simply mentioned the issues it sought to discuss. ALP's fundraising efforts complied with section 100 57 and were not at all similar to the fundraising efforts discussed in the Swiftboat Vets, MoveOn, and League of Conservation Voters conciliation agreements, all of which made clear that the money raised would support the election or defeat of a particular candidate.

Second, even if ALP had solicited funds by stating those funds would be used to help elect or defeat a particular candidate (it didn't), section 100 57 would be unconstitutional as applied here in light of the Supreme Court's decision in *WRITL*. The FEC approved section 100 57 before the Court's *WRITL* decision last term, and it sweeps too broadly in light of that decision. Briefly, if ALP's communications are not express advocacy or the functional equivalent of express advocacy and therefore are not expenditures under the Act, contributions to support those communications cannot convert ALP into a political committee. If that were the case, an organization would be required to report its activity and comply with the Act's source and contribution restrictions even if it never engaged in or express advocacy or, for that matter, electioneering communications. In deciding *WRITL*, the Court repeatedly stated that an entity's ability to run issue ads cannot turn on the entity's intent or the effect of the ads. "Under well-accepted First Amendment doctrine, a speaker's motivation is entirely irrelevant to the question of constitutional protection." *WRITL*, 127 S. Ct. at 2666. Thus, under *WRITL*, a contributor's motivation for making a contribution is irrelevant. Rather, the constitutionally-appropriate test is to determine what a donor's money bought. If the donation is used to buy genuine issue ads, as is the case here, the entity to which the donor gave cannot be considered a political committee regardless of what the donor thought when he or she made the contribution, if the donation is used for express advocacy or its functional equivalent, then the entity is a political committee regardless of the donor's intent.

In sum, ALP has at all times been well aware of its obligations under the Act and other laws and has worked hard to make sure its conduct and message comply with those laws. Complainants' unsubstantiated allegations are rebutted by the facts that ALP has been engaged in issues communications, has operated independently of any candidates, has not engaged in express advocacy or its functional equivalent, and has not raised or spent funds in a manner that would make it a political committee under the Act.

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The complaint should be dismissed without further action. If you would like additional information, please do not hesitate to contact us.

Sincerely,



Karen Getman

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(00034398-3)

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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission

3/6/08
Date

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Respondent/ Client Signature

Title

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Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U S C § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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Date

[Signature]
Respondent/Client Signature

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Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(d)-(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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